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September 17, 2007
File No.: 07-0911

Masi & Bruno
124 Long Pond Road, No. 11
Plymouth, MA 02360

Attn: Attorney John Bruno

Re: Broadley, Mark vs
Mashpee Neck Marina
DOI: 8/25/02

Dear Attorney Bruno:

Please accept this letter and the opinions contained herein as my written report in the above-referenced action. As a preliminary matter, I wish to confirm that you have retained me on behalf of Mashpee Neck Marina, Inc. as a consultant and expert witness. I understand that my opinions may be presented as evidence at trial. My services are being billed at an hourly rate of \$85.00 for consultations, trial preparation, deposition, and trial testimony. In addition to my hourly fee, I am being reimbursed for all reasonable expenses incurred by me on your behalf.

With regard to my qualifications, I am a graduate of the Massachusetts Maritime Academy at Buzzards Bay, Massachusetts. I received a Bachelors of Science degree in 1971, majoring in Nautical Science and Marine Transportation. After graduation, I was employed in various seagoing positions, including jobs with Military Sealift Command and Western Ocean Resources.

Significantly, for twelve years, I was General Manager of a full service marina complex, as well as being involved in the design, construction and maintenance of floating pier systems. During this time, I was also the President of Collyer Brothers, Inc., which was a marine towing and construction company, assisting with the design, construction, maintenance and repair of fixed and floating pier systems.

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I am currently employed as General Manager and Senior Marine Surveyor for Marine Safety Consultants, Inc. My place of business is located at 26 Water Street in Fairhaven, Massachusetts.

The company routinely investigates marine casualties involving commercial and recreational vessels, including personal injury and death claims, as well as hull, machinery, and cargo losses. Our clients include marine underwriters, law firms, vessel and marine waterfront facility owners and operators. I am often called upon to attend at waterfront facilities to conduct risk analysis.

Additionally, in the course of field investigation for yacht claims, I have traversed most OF the marina piers in New England.

At your request, I am enclosing a copy of my curriculum vitae and a list of trial and deposition testimony within the last ten years.

BACKGROUND, CIRCUMSTANCES, OPINIONS

In addressing the claim of Mr. Mark Broadley, I have been asked to opine on the condition of the Mashpee Neck Marina on August 25, 2002, when Mr. Broadley is alleged to have broken his ankle when he stepped into the opening between a finger pier and the main pier section.

In preparation of this report, we have reviewed certain documents provided by your office, including the deposition testimony of Nelson Brace, Timothy Leedham, Mark Broadley, as well as the Plaintiff's expert disclosures of Dr. Myron V. Hartunian, Captain Mitchell S. Stoller, and Daniel Briggs.

In our review of the matter, and our experience on such subjects, we find that there are no standards or regulations regarding the construction of marina floating piers. They do not fall under the purview of any regulatory agency, and local authority such as a building inspector has no authority nor building code standards by which to regulate the construction of floating marina piers.

The State of Massachusetts has a design review and oversight requirement that includes licensing of the facility. There are no regulations or standards regarding the particular construction attributes for which the Commonwealth of Massachusetts and U.S. Army Corp. of Engineers might review during the permitting process. The marina is properly licensed by the Commonwealth.

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The undersigned has regular occasion to visit all manner of marina facilities along the New England coast. The waters of many of these marinas are semi-exposed to wind and tidal conditions, and their scantlings are, of necessity, substantial.

In this case, we attended at the Mashpee Neck Marina on August 31, 2007 and find it on a small body of protected waters, approximately one (1) mile from the ocean inlet, and not situated along any regular navigable route that would generate significant boat wake action, nor any significant seasonal weather wave action, short of a tropical storm.

Mashpee Neck Marina lies generally at the northern navigation limit of a shallow estuary, Popponesset Bay, with an average water depth at mean low tide of less than 2'. A narrow dredged channel exists at the southerly approach to the marina, between two (2) points of land.

Due to icing concerns, the entire marina is disconnected and removed from the water each Fall.

The marina footprint is relatively large to the small water area. The possibility of a wake significant to be felt at the northernmost location of the claimant's berth is difficult to comprehend. The wake created by a boat maneuvering within the marina might "rattle" the supporting rods within the hinged tabs, but unless it was directly adjacent and within sight of the claimant, should not necessarily have any adverse effect on his ability to stand and walk on the floating pier sections.

We measured the gap between the main passenger access floats, and the perpendicular finger piers that support the vessels. As alleged, that gap is about 2.75".

We have had the opportunity to inspect many marina surfaces, and have been involved in the design, construction and installation of other marina facilities, particularly the floating pier system at the New Bedford Yacht Club in South Dartmouth, MA. We find that gaps between 2 and 3" are certainly the average for this type of marina construction, but greater gaps to as much as 4", have recently been observed.

The marina in question is a manufactured system, its design and type in common use throughout New England waters. This manufacturer and others continue to market systems of similar construction.

Floating piers are dynamic in nature, especially those that support small vessels in shallow water, such as this marina facility. The shifting of load, represented by passengers and their gear from one floating section to another creates changes in buoyancy, slightly changing the height from one section to another on a continuous basis, as the marina owners and guests proceed along the system.

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Right angle turns are found, not only along the main walkway system, but also when transitioning from the larger main section to the finger piers that lie between vessels, to which the vessels are primarily secured.

We opine that: (1) the marina floating pier system is consistent with the majority of floating pier facilities of similar construction design and type in the New England area; (2) the gap between the main pier section and the right angle finger pier, alleged to be the source of the injury, was only 2 ¾" wide, less than the length or width of a person's foot; (3) that anyone who had traversed the distance to get to this slip, even once, had encountered several similar gaps where floats were joined and transition and would be aware that a small gap existed.

(4) Lastly, we find that no standards or regulations exist that would be a factor in this marina design or maintenance.

The opinions expressed herein are based upon my review of the records provided above, and I reserve the right to modify or amplify my opinions based upon any new evidence or documents that may be presented. In providing these opinions, I am relying upon my education, training and professional experience.

Very truly yours,
MARINE SAFETY CONSULTANTS, INC.



Michael L. Collyer

MLC/elav

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